

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Zachary Taylor Holdings, Inc. property

DEPARTMENT: County Attorney's Office

DIVISION: Litigation

AUTHORIZED BY: Lola Pfeil

CONTACT: Sharon Sharrer

EXT: 7257

MOTION/RECOMMENDATION:

Approve negotiated cost settlement relating to Parcel Number 132 of the road improvement project for Lake Emma Road in the amount of \$20,081.00 for the statutory attorney's fee and experts' fees and costs. Judge Clayton Simmons.

District 4 Carlton D. Henley

Robert A. McMillan

BACKGROUND:

see attached

STAFF RECOMMENDATION:

Staff recommends that the Board approve the negotiated cost settlement relating to Parcel Number 132 of the road improvement project for Lake Emma Road in the amount of \$20,081.00 for the statutory attorney's fee and experts' fees and costs.

ATTACHMENTS:

1. Zachary Taylor Holdings, Inc. property

Additionally Reviewed By: No additional reviews



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

THROUGH: Matthew G. Minter, Deputy County Attorney *Matthew G. Minter*

FROM: David G. Shields, Assistant County Attorney *David G. Shields*
Ext. 5736

CONCUR: Antoine Khoury, P.E./Assistant County Engineer/Engineering Division *AK 4-16-09*

DATE: April 17, 2009

RE: Fee and Cost Settlement Authorization
Lake Emma Road
Parcel No. 132; Zachary Taylor Holdings, Inc.
Seminole County v. Recoton Corporation, et al.
Case No.: 2003-CA-850-13-K

This Memorandum requests settlement authorization by the Board of County Commissioners (BCC) to settle the attorney's fee and experts' costs on Parcel No. 132 on the Lake Emma Road road improvement project. The total settlement sum is \$20,081.00 for the owner's fees and costs allocated as follows:

Appraisal fee	\$15,000.00
Land Planner fee	\$ 2,250.00
Cost Estimator fee	\$ 950.00
Broad & Cassel costs	\$ 0.00
Statutory Attorney Fee	<u>\$ 1,881.00</u>

TOTAL: \$20,081.00

I PROPERTY

A. Location Data

Parcel No. 132 is located at the southwest corner of Lake Emma Road and Commerce Street within the Lake Mary Commerce Center. See Location Map attached as Exhibit A and parcel sketch as Exhibit B.

B. Street Address

The street address for Parcel No. 132 is void as this is vacant property.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2002-R-56 on April 9, 2002, authorizing the acquisition of Parcel No. 132 and finding that the Lake Emma Road improvement project was necessary and served a public purpose and was in the best interests of the citizens of Seminole County. The Order of Take occurred on July 1, 2003, with title vesting in Seminole County on July 17, 2003, the date of the good faith deposit for this parcel in the amount of \$10,000.00.

III ACQUISITION AND REMAINDER

The taking was a 10-foot strip and corner clip taking that extended along the subject's east property line and the corner of Commerce Street and Lake Emma Road and consisted of .048 acres (2,098 square feet).

The remainder property is 1.590 acres and retains similar frontage and the same access and similar shape as before the taking.

III APPRAISED VALUES

The County's original report dated November 12, 2001 by The Spivey Group, Inc. (formerly Hastings & Spivey, Inc.), reported full compensation for Parcel No. 132 to be \$8,800.00. The updated report dated September 16, 2005, with date of value as of July 17, 2003, opined compensation at \$10,000.00.

The owner's appraiser, Consortium, produced an appraisal report dated June 7, 2005, which opined compensation to be \$15,700.00.

IV BACKGROUND

Ordinarily, the relatively small amount in controversy in this case, \$5,700.00, would have resulted in an early settlement. Unfortunately, the owner repeatedly resisted the County's many attempts to negotiate a prompt settlement of this matter.

On October 23, 2007, the BCC authorized the issuance of an offer of judgment of \$18,700.00 to the owner. This amount was more than enough to cover the owner's appraisal amount plus interest on the difference between the good faith deposit and the owner's appraisal amount. When the owner continued to resist settlement based on its own appraisal amount plus interest after numerous attempts to negotiate this matter, the County moved for summary judgment on this basis. The court granted the motion and entered final summary judgment in the amount of \$17,621.76 on February 26, 2009. The final summary judgment reserved jurisdiction on the matter of the owner's fees and expert costs.

V ATTORNEY'S FEES AND COSTS

A. Attorney's fees. The statutory attorney's fee reimbursement totals \$1,881.00. The sum is statutorily computed (33% of the benefit) based upon the settlement sum of \$15,700.00 less the written offer of \$10,000.00 to produce a benefit of \$5,700.00.

B. Costs. The owner initially claimed the following costs:

Appraisal	\$23,282.50
Land Planner	\$ 2,259.19
Cost Estimator	\$ 1,260.00
Miscellaneous	\$ 447.38

TOTAL:	<u>\$27,249.07</u>
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The negotiated settlement sum for costs totals \$18,200.00, allocated:

Appraisal	\$15,000.00
Land Planner	\$ 2,250.00
Cost Estimator	\$ 950.00
Miscellaneous	\$ 0.00

TOTAL:	<u>\$18,200.00</u>
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In negotiation the rates were reduced and some non-reimbursable costs were taken out of the claim.

VI COST AVOIDANCE

By this settlement, the County avoids all additional attorney fees and costs associated with litigation. Moreover, approval of this cost settlement resolves all remaining claims related to Parcel No. 132.

VII RECOMMENDATION

County staff recommends that the BCC approves this negotiated cost settlement at \$20,081.00.

DGS/dre

Attachments

Exhibit A – Location Map

Exhibit B – Sketch

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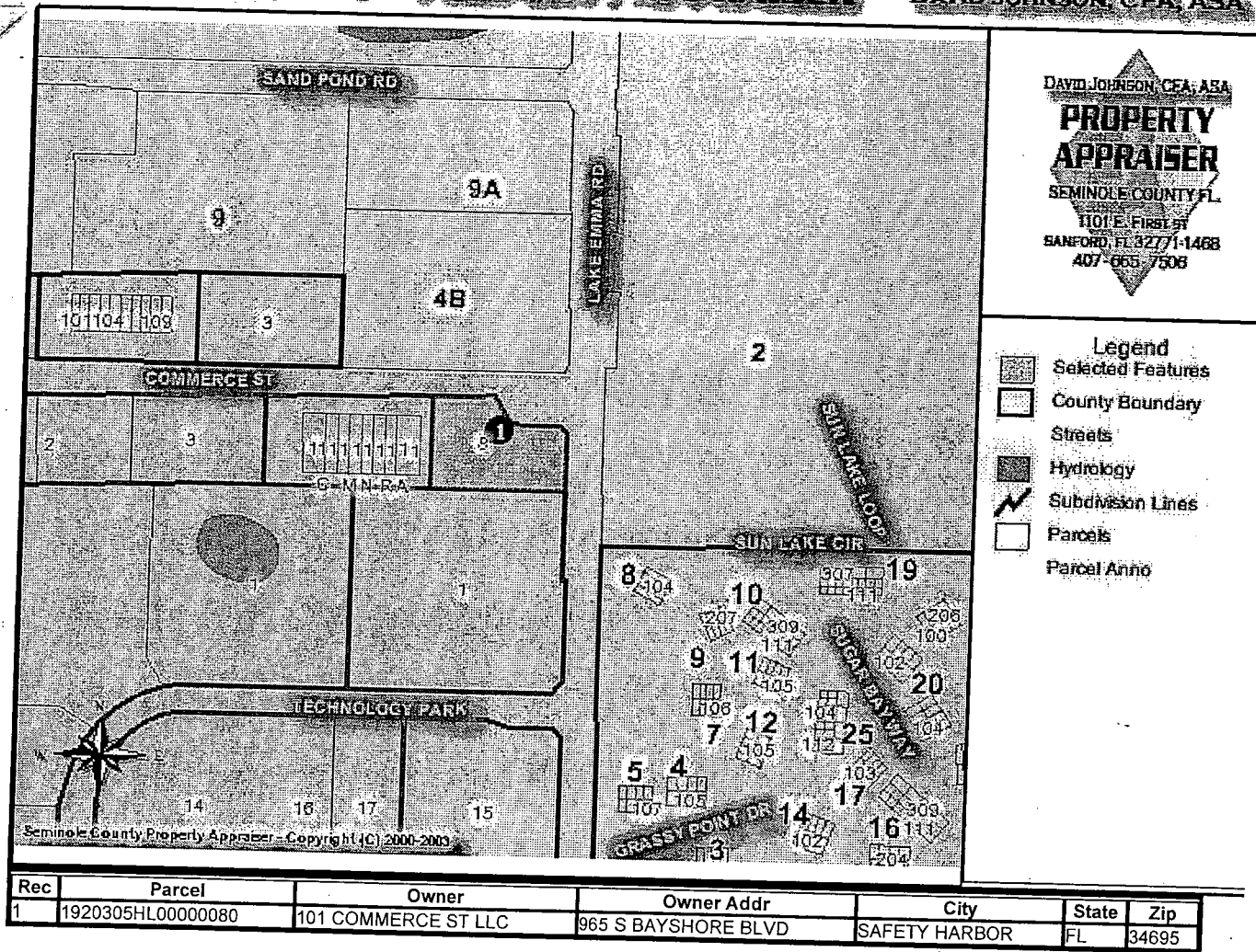


EXHIBIT A

229.70'

NORTH
NOT TO SCALE
NOT A SURVEY

SUBJECT PARCEL 132

PARENT TRACT: 1.638 ACRES
AREA OF TAKING: 2,098 SF
REMAINDER: 1.590 ACRES

130.73'

130.07'

10' Drainage/Utility Easement
Per Plat

20' Drainage
Easement Per Plat

52.71'

52.71'

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100.02'

5' Drainage/Utility Easement Per Plat

179.83'

22.35'

20.00'

199.84'

105+03.16

LAKE EMMA ROAD

Sta. # 107+02.97

EXHIBIT B